

ESTTA Tracking number: **ESTTA227134**

Filing date: **07/30/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184550
Party	Defendant Convenience Food Industries (Private) Limited
Correspondence Address	DAVID E. WESLOW SUTHERLAND ASBILL & BRENNAN LLP 1275 PENNSYLVANIA AVE, NW WASHINGTON, DC 20004-2415 UNITED STATES eteas@sablax.com
Submission	Motion to Consolidate
Filer's Name	David E. Weslow
Filer's e-mail	eteas@sutherland.com
Signature	/David E. Weslow/
Date	07/30/2008
Attachments	MotConsolidate.pdf (4 pages)(128657 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LAZIZA HOLDING COMPANY,

Opposer,

v.

CONVENIENCE FOOD INDUSTRIES
(PRIVATE) LIMITED,

Applicant.

E-FILING

Opposition No.: 91184548

Application No.: 77039181

Opposition No.: 91184550

Application No.: 77039182

**APPLICANT'S MOTION TO CONSOLIDATE PROCEEDINGS
PURSUANT TO FED. R. CIV. P. 42(a)**

Convenience Food Industries (Private) Limited ("Applicant") hereby moves the Trademark Trial and Appeal Board to enter an order consolidating Opposition Nos. 91184548 and 91184550.

I. BACKGROUND

Laziza Holding Company ("Opposer") initiated Opposition No. 91184548 on June 11, 2008 seeking to prevent federal registration of Applicant's LAZIZA INTERNATIONAL (and Design) mark of Application No. 77039181. Application No. 77039181 is directed to "aerated water; mineral water; syrups and other preparations for making beverages, namely, red syrups of herbs and flowers, sardai/thandai syrups, and fruit, flower, and herb extracts." As grounds for the opposition, Opposer has asserted ownership of Registration No. 2858232 for "beer, non-alcoholic beer and non-alcoholic malt beverages." Applicant filed an Answer in Opposition No. 91184548 on July 21, 2008.

Opposer initiated Opposition No. 91184550 on June 11, 2008 seeking to prevent federal registration of Applicant's [Urdu] INTERNATIONAL (and Design) mark of Application No.

77039182. Application No. 77039182 is directed to “aerated water; mineral water; syrups and other preparations for making beverages, namely, red syrups of herbs and flowers, sardai/thandai syrups, and fruit, flower, and herb extracts.” As grounds for this opposition, Opposer has asserted ownership of Registration No. 2858232 for “beer, non-alcoholic beer and non-alcoholic malt beverages.” Applicant filed an Answer in Opposition No. 91184550 on July 21, 2008.

II. ARGUMENT AND AUTHORITIES

Opposition Nos. 91184548 and 91184550 involve common questions of law and fact and involve identical parties. The Board, Opposer, and Applicant will all benefit from the savings in time, effort, and expense which may be gained from consolidation of the proceedings. *See* TBMP § 511 (citing, *inter alia*, *S. Indus. Inc. V. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1297 (TTAB 1997)).

The applications at issue in both proceedings recite identical goods and are directed to different language versions of the same mark. Moreover, Opposer’s pleadings are identical in both proceedings, and Opposer’s Notice of Opposition filed against Application No. 77039182 acknowledges that the mark is an Urdu language version of the English language mark of Application No. 77039181. Thus, consolidation will not cause any prejudice or inconvenience to Applicant or Opposer. *See World Hockey Ass’n v. Tudor Metal Products Corp.*, 185 USPQ 246, 248 (TTAB 1975) (ordering consolidation where issues were substantially the same and consolidation would be advantageous to both parties).

Applicant has filed an Answer in both opposition proceedings, i.e., issue has been joined, the trial dates for both proceedings are identical, and the parties have not yet commenced discovery. Therefore, the posture of both proceedings is appropriate for consolidation. *Compare, Lever Brothers Co. v. Shaklee Corp.*, 214 USPQ 654, 655 (TTAB 1982) (noting denial

of motion to consolidate due to different posturing of the relevant proceedings).

III. CONCLUSION

In light of the common questions of law and fact and identical parties involved in the proceedings, Applicant requests that the Board issue an Order pursuant to Fed. R. Civ. P. 42(a) and TBMP § 511 consolidating Opposition Nos. 91184548 and 91184550.

Respectfully submitted,

CONVENIENCE FOOD INDUSTRIES
(PRIVATE) LIMITED



Dated: July 30, 2008

By:

David E. Weslow
Patricia B. Cunningham
SUTHERLAND ASBILL & BRENNAN LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004
202.383.0100 (telephone)
202.637.3593 (facsimile)
Email: eteas@sutherland.com

PROOF OF SERVICE
[F.R.C.P. Rule 5, F.R.A.P. 25]

I declare that I am employed in Washington, DC; I am over the age of 18 and am not a party to the above identified action; my business address is 1275 Pennsylvania Ave., NW, Washington, DC 20004. On the date set forth below, I served a true and accurate copy of the document(s) entitled: APPLICANT'S MOTION TO CONSOLIDATE PROCEEDINGS PURSUANT TO FED. R. CIV. P. 42(a) on the party(ies) in this action by placing said copy(ies) in a sealed envelope each addressed as follows:

Joanne Ludovici-Lint, Esq.
Sarah Brown, Esq.
McDERMOTT WILL & EMERY LLP
600 13th St., N.W.
Washington, DC 20005

☒ [By First Class Mail] I am readily familiar with Sutherland Asbill & Brennan LLP's practice for collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document(s), by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business.

☐ [By Overnight Courier] I caused each envelope to be delivered by a commercial carrier service for overnight delivery to the offices of the addressee(s).

☐ [By Hand] I directed each envelope to the party(ies) so designated on the service list to be delivered by courier this date.

☐ [By Facsimile Transmission] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above.

☐ [By Electronic Transmission] I caused said document to be sent by electronic transmission to the e-mail address(es) indicated for the party(ies) listed above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this date at Washington, DC.

Dated: July 30, 2008


Cindy Whitaker